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PRESERVATIVE

Against the major part of

TRIALS

AND

NON-SUITS

In triviall Cases.

And many other unnecessary charges about other things in further order to the regulation of the unnecessary charges in the proceedings in Law, and for saving to the people of this Nation every year hereafter a considerable part of three millions of money formerly unlawfully extracted from them by Monopolizers about the Law written, proposed, and tendered to the same consideration as were many former Propositions.

By W. J. of the Middle Temple.

For mitigating the Statute for tender of Emends for Trospassers and that it may also bein Replevin after Cattell in Pound, and for goods and chattels after the same taken into Custody, with limitation and costs to the use of such tender.



Herein severall good Lawes and Statutes have been made to avoid vexatious petty suits, one of them being in the latter time of King James to enable Defendants to tender Emends in some cases: But since many persons to avoid that law, have cunningly and secretly commenced actions before emends tendered; and then the tender when such come too short, and after diverse vexatious suits have been prosecuted and pursued to tryall by many, to the utter undoing of many poor people and not able to goe to Law, and to the great losse of others.

And whereas divers cunning persons have impounded and locked up many distresses, before the owners thereof have had, or could have notice of the taking of the same; whereby such owners could make no tender to avoid prosecution of chargeable suits in Law concerning the same, being a tender of emends after suit begun, or distress so ordered cometh too late.

It is proposed to be desired that it may

Be Enacted, That emends, rents, and services, may be rendered after any action brought or to be brought, or cattell or other distresses impounded or locked up, or to be impounded or locked up, with such charge as any plaintiff or taker of distresses do or shall sustain to the time of such tender made, in all actions and suits mentioned in the statute made and enacted in the time of *James* late King of *England*, concerning tender of emends for involuntary trespasses, and in other trespasses done without acting or threatening of violence. And that such tender shall and may be a sufficient barre for the defendant in such action to plead to the same, and also in Replevyns after the cattell in pound, or goods or chattels distressed and locked or closed up.

And that if such plaintiff or distreyner in such action can or will prove any more damage sustained, or rents, or services due, then he or shall be rendered as aforesaid; and such defendant or tenant doth not, nor will agree to to satisfie or pay the same: then the Sheriff or Sheriffe, his, or their deputy or deputies of the countie or city, where such trespass is or shall be done; or rents or services grow due, shall and may be authorized and compelled at such defendants or tenants reasonable costs only to summon a Jury of such lawfull sufficient and able men, (as be mentioned in the propositions for election of impartiall Jurors) who shall inquire of, and ascertain such damages and arrears (the plaintiff, defendant, and tenant having convenient notice of the time and place of such Inquest to be taken.) And that such Jurors shall ascertain such damage, arrears of rent or services by such defendant or tenant to be payed, done or performed to such plaintiff, distresse taker, or demandant for such trespasses, arrears, and services. And that if such defendant or tenant doth not, nor shall pay or satisfie such damages, arrears, or services, with the costs occasioned by the delay thereof within ten dayes next after such assessement or ascertainment; then such plaintiff, distreyner, or demandant may have and maintain an action of debt to recover, and thereby recover the same with his, her, or their double damages and costs in any of the superiour courts at *Westminster*.

II For compelling of Defendants speedily to answer, when the Plaintiffs Witnesses be sick, or going beyond Sea, and such Witnesses immediately to be examined.

Whereas divers people of this Nation having had their only Witnesses to prove their just Rights and Titles to, and in divers Mannors, Messuages, Lands and Tenements; and many just debts, duties and demands due, and owing to them, and other rights, very sick & weak, and some of them in severall distinct places far remote the one from the other of them, and from the Cities of London and Westminster, & other like to die, and other within some few dayes to depart this Nation, and to sail, passe, or travel into parts beyond the Seas (and there to inhabit and reside) before such people could procure any proceesse to compell, or procure such party or parties, against whom such proof was to be made to appear, and to force his, or their answer to any Bill, or Complaint in any Court, proper for such proof to be made in, have lost the benefit of the testimony of such Witnesses, and with them divers Mannors, Messuages, Lands and Tenements, Debts and Duties, by reason of the death of divers of such witnesses, and the departure of others out of this Nation before the benefit of their testimony hath been, or could be obtained.

It is proposed to be desired, for remedy thereof, that it may

Be Enacted, That any person, desiring for him or them, against any other or others to have any witness or witnesses examined, which be sickly, or infirme, or intending to take a voyage, or passe, or travaile beyond Sea; and that it shall be generally feared of most of the acquaintance of such sickly or infirm. witness or witnesses, that he or they be not like to live and continue in their perfect senses and understandings by the space of ——— dayes, or some other time by the Supreme Authority of this Nation to be thought convenient in that behalf, or that it shall be reported, that any such witness or witnesses intend, and that they be preparing for, or for an accommodation for such voyage, passage or travail within such time, and this to be made appear upon Oath of such person as is mentioned in other Proposals formerly published, that then such person or persons so desiring such examination, may cause, or procure a Bill or Complaint to be drawn, and fairly ingrossed, and Pledges found to it according to the Law, and subscribed by such a Councell learned in the Law, as is mentioned in other Proposals herein mentioned, and a copy thereof delivered to him or them, against whom such person or persons so shall desire such Examination, may cause, or procure a Bill or Complaint to be drawn, and fairly ingrossed, and pledges found to it according to the law, and subscribed by such a Councell learned in the Law, as is mentioned in other Proposals herein mentioned, and a copy thereof delivered to him or them against whom such person or persons so shall desire such examination; or left at each of his, or their dwelling house in such manner and form as is mentioned in such other Proposals, with a note of his, or their request of

the answer of such defendant or defendants to such Bill and desire or intention to examine the witness aforesaid, & a note of the names of such witnesses, & of his gentle men of good quality, honesty, understanding & learning, whom he desireth, and intendeth to be his Commissioners to examine such witnesses, and of the place in particular where he hath left, or shall leave such Bill or Complaint, and a note of the names, and leaves such Bill ingrossed with a note of such names, with the next Justice of the Peace inhabiting nearest to such defendant or defendants, or the major part of them, or at such habitation of such Justice. And that such defendant or defendants shall within, put in his, or their answer then next following to such bill or answer ingrossed, as is mentioned in the Proposals formerly published, upon his Oath before such Justice, and he be empowered, & compelled to take the same, and there except against, if he or they will, against the one half of such Commissioners, and name for him or them, others of such as were so named by such complaint, or complainants, and so many, & leave a note thereof with such Justice for such Complainant or Complainants to view, and see, and except against the one half thereof. And that a Commission shall, and may be made, and granted by such Justice to those not excepted against, to examine such witnesses, and that such Commissioners, after such Commission executed, shall return the same Commission and deposition thereupon taken, with the interrogatories, and so into the high Court of Chancery, or to such Justice; and if to such Justice, that then he shall send the same with such Bill and Notes left, or to be left by such Complainant or Complainants; and such answer and note so left, or to be left, or to be left by such Defendant or Defendants, (if he or they doe, or shall bring to, or leave any with such Justice) and that the same shall be so sent, and delivered into the said Court of Chancery, both by such Commissioners or by such Justice as is mentioned in the former Proposals; and that the proper draught of such depositions shall be returned and delivered out as before is mentioned in the said Proposals, if such complainant, or complainants shall pray the same, and not otherwise; and that such Justice shall make, or cause such Commission to be made to such Commissioners in the names of the *Keepers of the Liberty of England, &c.* for examination of such witnesses, according to the matter, and usual form for examination mentioned in writs of Commission usually of course issuing out of the High Court of Chancery, with a precept, or direction in the same, that they shall return the same, with the depositions thereupon taken, or to be taken, and the interrogatories upon which they shall examine such witnesses unto the said Justice, or send the same into the said Court of Chancery immediately after execution of the said Commission; and that the same shall be there received, and kept in such manner and form as is mentioned in the before recited Proposals, and stand, and be as valid and sufficient to all intents and purposes, as any depositions taken by virtue of any Commission issuing out of the said Court of Chancery, if such defendants did, or shall answer as aforesaid, and if not then also, till after such defendant have answered, or did, or shall answer to such Bill or Complaint, and such witnesses living, and of perfect sense and memory, and

and in England easily to be found, by such complainant or complainants after such Defendant or Defendants have joyned in Commission in the said Court of Chancery, with the said complainant or complainants to be examined of the said witnesses again, have had sufficient and convenient time, viz. by space of — next after such joyning in Commission.

And that such Commission shall be fairly written in parchment, and the said Depositions written in manner and form as is mentioned in the said proposals.

III That a Comor or Plaintiff in a Judgement or Statute Case may make his Entry and Claim, and then bring an Ejectment, or real Action, as the Cause shall require, which he is driven to also; great charge and trouble about Executions served concerning the same.

Whereas divers honest people of this Nation have been put to great expenses and charges, and put to much delay about Executions of writs of choice and extent, and special writs upon Outlaws against Lands and Tenements; and yet after such expenses and delays and Executions done, or could the plaintiffs or comorers in such Writs have possession of such Lands or Tenements, till they have, or shall prove their Title thereto upon an Action of Ejectment (if a plea be pleaded thereunto); and the Tenant in possession thereof thereby evicted; and after such Plaintiffs and comorers have been obliged the same by dormant precedent Titles and charges; (which they neither have, nor could come to the knowledge of, till they have been brought upon such Lands and Tenements); and divers others have had their Inquisitions upon such, avoided by Writs (of hearing complaints) by reason they have not found their Inquisitions of all the Lands and Tenements (which were of the Defendants or comorers in such Writs at the time of the entering into the Judgements and Statutes, upon which such Writs have issued and after) many times some small parcels thereof have been omitted by reason they have been obscure and dormant as aforesaid, till such Writs of (hearing complaints) brought.

For remedy whereof, it is proposed to be desired, that it may.

Be Enacted, That any plaintiff or plaintiffs (who hath, or have, or hereafter shall have a Judgment, Statute, or Outlaw against any defendant, and shall be advised by counsell, or finde that he, she, or they can have no further intelligence by inquest, upon Writ, or Writs of Ejectment or Extent, then they shall know before) may make his, her, or their Entry and claim upon, and unto all, and every parcell and parcels of Lands, Tenements, or Hereditaments, annuities, or Rents, in all, every, or any mans possession, or wherein such defendant was then seized of any Estate, or had any Estate, Title, Interest, or terme of years, which were of such defendant, the time of such Judgement en-

ired, or such Statute acknowledged, or such Outlary promulgated, or after: and that such entry shall be as sufficient for such plaintiff or plaintiffs, as if any Elegit, Extent, speciall Writ of Outlary, and liberate thereupon, were thereupon executed, returned, and filed.

And that upon such entry and claim such plaintiff or plaintiffs shall, and may be intituled as, or in the nature of Free-hold, or, and in such Lands, Tenements, annuities, and Rents, and prosecute for recovery of, and have, and take the possession, Rents, Issues, and profits thereof, in as ample and beneficiall manner and forme, as in, of, and concerning other Lands and Tenements, (that is to say) by vertue of such Writs of choice or Extent, untill such plaintiff or plaintiffs be, or shall be fully satisfied of the debts or duties in such Writs, and by such Writs of speciall Outlary, untill such satisfaction, reversal, or pardon of such Outlary, and sufficient bail, mainprie, Sureties, or Manueaptors found, and put in the court into which such Outlary be, or shall be returned for satisfaction of such debt or duty, if it be, or shall be recovered upon a new action to be brought for the same cause upon, or for which, such Outlary was, or shall be pronounced.

And that by reason of any such Writ (of hearing complaint) no person or persons shall be removed from, or hindered of the possession of any such Lands, Tenements, Rents, or annuities so extended, or to be extended other then of so much onely as the plaintiff or plaintiffs in such Writ (of hearing complaint) do or shall make appear upon Trevall, that the value of the Lands, Tenements, or annuities so omitted, to be extended, be, or shall be compelled to make restitution to the plaintiff or complainant in such Writ (of hearing complaint) of the profits received, or to be received of such Lands, Tenements, Rents, or Annuities for the time that such person or persons so extending, entered, or shall enter upon the same, untill their time of the leaving the possession thereof, onely for so much as the value of such omission, during the same time, be or shall be.

And that then such consor or consors, Plaintiff or Plaintiffs in such Judgements or Extents, may extend such omissions, every of them, as they be, or shall be so brought to light, the one of them after the other of them.

IV. For sale of distresses, if the owners after appraisement by Jury doe not satisfie the rent or damage for which the same shall be taken; or replevy the distresse within convenient time.

FOrasmuch as divers obstinate and perverse parties after distresses have been taken of their goods and chattels, and cattell (for rent and other demands by them justly due) have suffered such cattell to remain in pound till they have perished, and some others of them have suffered such goods and chattels so taken to remain in the hands of him or them (who distreyned the same a long time before they have replevied the same, and some of such froward parties have never replevied such goods and chattels so distreyned at all, whereby it hath been impossible for any (who so distreyned) to keep such goods and chattels from perishing (to which every one distreyning is bound by Law) without great losse.

And whereas no man so distreyning hath yet any power by the Law to make sale of any such distresse.

It is desired that it may be petitioned to the Supreme authority of this Nation that it may

Be enacted, that if any owner or owners of any distresse so taken or to be taken, or some other for him, her, or them, do not nor shall (within two dayes next after notice thereof be, or shall be given to him, her, or them; or within 8 dayes next after such notice be or shall be left at the dwelling house or houses, or usuall place or places of abode of him, her, or them, when such distresse be or shall be so taken), replevyn the same according to the course of Law; then the Sheriff or Sheriffs, his or their deputie or deputies of every county, citie, or other place (whereof there be, or shall be a Sheriff or Sheriffs) shall have power and be compelled to summon the party or parties (who shall owe or claim such distresse, and him, her, or them to whom such rent or demand be or shall be payable or due) to be and appear before such Sheriff or Sheriffs, his or their deputie or deputies, at a certain day and place within the hundred, Lath, Rope, Wopentake, Town-corporate, or other such like place or Division, wherein such distresse be or shall be taken. And that if such owner or owners of such distresse do not, nor shall appear before such Sheriff or Sheriffs, deputy or deputies at such time and place, (having notice thereof given to him her or them by the space of 6 hours, not left at such house or houses, place or places of abode by the space of 12 hours next before such time so to be appointed) or replevyn or cause such distresse to be replevied; then such Sheriff or Sheriffs, deputie or deputies be and shall be empowered and compelled to sell such distresse by the appraisement of 12 or more of such Jurors as are mentioned in the proposalls or propositions concerning Jury-men (in such manner as therein is mentioned, and deliver so much money made or to be made thereof to him, her, or them (to whom such debt, rent, or duty, be or shall be found to be due by inquest of such Jurors or Inquisitors so to be taken before such Sheriff or Sheriffs, deputy or deputies, and in discharge of such debt, rent,

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or duty) and he or they be compelled and authorized so to furnish such Jurors, and to take such inquests and minister so, and take oaths of them, and of Witnesses produced or to be produced concerning any such thing. And that such Jurors or Inquestors, and Witnesses or Witnesses for finding or depositing any thing aforesaid, be not liable to any fine or penalty to the same penalties mentioned in the said recited proposals or propositions, and in those for due serving of execution.

And that such Sheriff and Sheriffs, deputies and deputies be empowered, authorized and compelled to render the writs, (which shall be made of, or by such distress) to him, her, or them (who at the making of the same were or shall be the true owner or owners thereof) regarding the same; only deducting such reasonable charge as such Sheriff or Sheriffs, deputies or deputies shall bear in keeping such distress until such sale thereof and costs and travell to be taken above such sale and things as aforesaid.

And that every such Sheriff and Sheriffs shall make such and to many deputies to perform the same, as they usually have done to make Replevins.

And that all and every Sheriff and Sheriffs respectively be, and shall be answerable for every thing, that any of his or their deputies or deputies do or shall do in or about the premises.

And that every Sheriff and Sheriffs for not performing his or their office or duty in the premises, as before is mentioned, shall forfeit and lose and pay to the party or parties so grieved, or so aggrieved thereby, so much as his, her or their debt, rent, or duty (for which he, she or they do or shall so distress) do or shall amount to, to be recovered with damages and costs, and in such manner as is mentioned in the former proposals.

THE END

